

REMARKS

In the Office Action, mailed on November 13, 2006, the drawings were objected to, claims 3, 16 and 39 were objected and claims 1, 2, 4-15, 18-21, 40-43 were rejected.

Based on the detailed action, Applicant understands that claims 2, 16 and 39 were objected to because some features were not shown in the drawings. The drawings were also objected to due to same reasons. Applicant hereby cancels claims 2, 16 and 39 and request that the drawing objections to be reconsidered. This response addresses the points raised in the detailed action.

Claims 1, 3-5, 7-16, 18-21, 38, 40 and 43 were rejected under 35 U.S.C. 103(a), as being unpatentable over Bossel (U.S. Patent No. 6,334,290 B1, hereinafter "Bossel"), in view of Oko et al (U.S. Patent No. 6,218,038 B1, hereinafter "Oko") as evidenced by Wynaski (U.S. Patent 7,021,603 B3, hereinafter "Wynaski"). Claims 6, 17 and 42 were rejected under 35 U.S.C. 103(a) as being unpatentable over Bossel in view of Oko as applied to claims 1, 11 and 38, in further view of Hsu (U.S. Patent No. 5,833,822, hereinafter "Hsu").

No specific rejection of claim 41 was set forth in the Office Action. Accordingly, Applicant would solicit allowance of the claim, or its rejection in a subsequent non-final Office Action.

By this paper, Applicant has canceled claims 2, 16 and 39 and amended claims 1, 3, 6, 10, 11, 17, 38 and 42 for clarification of certain features and to expedite allowance of the present application. These amendments do not add any new matter. Upon entry of these amendments, claims 1, 3-15, 17-21, 38 and 40-43 remain pending in the present application and are believed to be in condition for allowance.

In view of the amendments above and the following remarks, the Applicant requests for reconsideration and allowance of all pending claims.

Rejections Under 35 U.S.C. § 103

Legal Precedent:

The pending claims must be given an interpretation that is reasonable and consistent with the *specification*. See *In re Prater*, 415 F.2d 1393, 1404-05, 162 U.S.P.Q. 541, 550-51 (C.C.P.A. 1969) (emphasis added); see also *In re Morris*, 127 F.3d 1048, 1054-55, 44 U.S.P.Q.2d 1023, 1027-28 (Fed. Cir. 1997); see also M.P.E.P. §§ 608.01(o) and 2111. Indeed, the specification is “the primary basis for construing the claims.” See *Phillips v. AWH Corp.*, No. 03-1269, -1286, at 13-16 (Fed. Cir. July 12, 2005) (*en banc*). One should rely *heavily* on the written description for guidance as to the meaning of the claims. See *id.*

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (PTO Bd. App. 1979). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). Accordingly, to establish a *prima facie* case, the Examiner must not only show that the combination includes *all* of the claimed elements, but also a convincing line of reason as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985).

When prior art references require a selected combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gained from the invention itself, i.e., something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. *Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988). One

cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

Response to the comments of Examiner

The Examiner rejected independent claims 1, 11 and 38 under 35 U.S.C. 103(a), as being unpatentable over Bossel in view of Oko as evidenced by Wagnski. On page 4 of the Office Action, the Examiner stated that the magnetic valve assembly described in Oko could be coupled with fuel cell separators of Bossel to suggest a structure similar to instant invention. The Examiner, further noted that

when there is no fluid flowing through a fuel cell, the MEA cannot electrochemically and cannot produce any current, therefore would isolate itself from other fuel cell.

Applicant respectfully disagrees with the Examiner on this point. It is agreed that stopping the flow of fuel and the oxidant to a fuel cell will not produce any current in that cell, but when such a cell – not producing any current, is a part of a cell stack, it essentially leads to a open circuit among the fuel cells that are electrically connected in a stack. So the fuel cell stack cannot function (cannot produce power). Although this may depend upon the electrical connections (e.g., series or parallel), the reference certainly does not support the Examiner's reading.

As recited in the amended claims, the fuel cell isolation device claimed includes a jumper, that electrically connects a pair of adjacent interconnects. This effectively bypasses the cell or in other words, electrically isolates it.

Oko clearly lacks such a dual approach of electrically isolating (bypassing) the failed cell and stopping the flow of fuel (and or oxidant) to the cell.

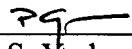
Thus the cited references individually or hypothetically combined do not support a *prima facie* case of obviousness of independent claims 1, 11 and 38. The dependent claims are clearly patentable at least by virtue of their dependency from an allowable base claim.

Conclusion

In view of the remarks and amendments set forth above, Applicant respectfully requests allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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